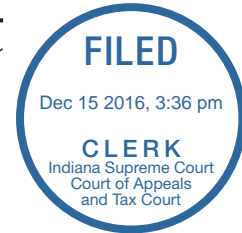


In the
Indiana Supreme Court

Cause No. 94S00-1602-MS-86



Order Amending Rules of Appellate Procedure

Under the authority vested in this Court to provide by rule for the procedure employed in all courts of this state and this Court's inherent authority to supervise the administration of all courts of this state, the Indiana Rules of Appellate Procedure are amended as follows (deletions shown by ~~striking~~ and new text shown by underlining):

...

Rule 40. Motion To Proceed *In Forma Pauperis*

A. Appeal From a Trial Court.

(1) *Prior Authorization by the Trial Court.* A party who has been permitted to proceed in the trial court in *forma pauperis* may proceed on appeal in *forma pauperis* without further authorization from the trial court or Court on Appeal. See Rule 9(E).

(2) *Motion to the Trial Court.* Any other party in a trial court who desires to proceed on appeal in *forma pauperis* shall file in the trial court a motion for leave to so proceed, together with an affidavit conforming to Forms #App.R. 40-1 and #App.R. 40-2, showing in detail the party's inability to pay fees or costs or to give security therefor, the party's belief that the party is entitled to redress, and a statement of the issues the party intends to present on appeal. If the trial court grants the motion, the party may proceed without further motion to the Court on Appeal. If the trial court denies the motion, the trial court shall state in a written order the reasons for the denial.

(3) *Revocation of Authorization by the Trial Court.* Before or after the Notice of Appeal is filed, the trial court may certify ~~to~~ or find that a party is no longer entitled to proceed in *forma pauperis*. The trial court shall state in a written order the reasons for such certification or finding.

(4) *Motion to the Court on Appeal.* If the trial court denies a party authorization to proceed in *forma pauperis* the party may file a motion in the Court on Appeal for leave to so proceed within fifteen (15) days of service of the trial court's order. See Form #App.R. 40-1. The motion shall be accompanied by a copy of any affidavit supporting the party's request filed in the trial court. If no affidavit was filed in the trial court or if the affidavit filed in the trial court is no longer accurate, the motion shall be accompanied by an affidavit conforming to

Form #App.R. 40-~~12~~. The motion shall be accompanied by a copy of the order setting forth the trial court's reasons for denying the party in *forma pauperis* status on appeal.

B. Appeal From an Administrative Agency. Any party to a proceeding before an Administrative Agency who desires to proceed in *forma pauperis* on appeal shall file with the Court on Appeal a motion for leave to so proceed, together with an affidavit conforming to Forms #App.R. 40-1 and #App.R. 40-2, showing in detail the party's inability to pay fees or costs or to give security therefor, the party's belief that the party is entitled to redress, and a statement of the issues the party intends to present on appeal.

...

Form #App. R. 40-1

IN THE

[INDICATE INDIANA COURT OF APPEALS OR SUPREME COURT OR GIVE NAME OF TRIAL COURT]

No. _____

_____) Appeal from the _____ [Trial
[Insert name], Appellant, _____) Court or Administrative Agency]
_____) _____
_____) _____
_____) Trial or Administrative Agency Case No:
v. _____)
_____) _____
_____) _____
_____) The Honorable _____, Judge
[Insert name], Appellee. _____)

Motion to Proceed on Appeal
In Forma Pauperis

I, _____, am the [Appellant; Appellee] in the above-entitled case and hereby move for leave to proceed on appeal in forma pauperis pursuant to Appellate Rule 40(a)(4).

As required by Appellate Rule 40(a)(4), I am supplying with this motion: (a) an affidavit from me conforming to Form #App.R. 40-2; and (b) the trial court's order denying or revoking my motion to proceed in forma pauperis.

Respectfully submitted,

[Signature]

Date

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____, 20____, the foregoing was served upon the following persons, by [state exact method of service]:

[List names and address of:

(1) counsel of record or pro se party;

(2) Attorney General, if applicable]

[Signature]

**(SAMPLE AFFIDAVIT IN SUPPORT OF
MOTION TO PROCEED ON APPEAL
IN FORMA PAUPERIS)**

Form #App. R. 40-12

IN THE
[INDICATE INDIANA COURT OF APPEALS **OR SUPREME COURT** OR GIVE NAME
OF TRIAL COURT]

NO. _____

_____ [Insert name], Appellant,)	Appeal from the _____ <u>[-Trial Court or Administrative Agency]</u>
)	
)	
)	Trial <u>or Administrative Agency Court</u> Case
vs.)	No: _____
)	
)	The Honorable _____, Judge
)	
)	
)	
_____ [Insert name], Appellee.)	

**AFFIDAVIT IN SUPPORT OF MOTION TO
PROCEED ON APPEAL IN FORMA PAUPERIS**

I, _____, state, under penalties of perjury, that I am the [Appellant; Appellee] in the above-entitled case; that in support of my motion to proceed on appeal without being

required to prepay fees, costs or give security therefor, I state that because of my poverty I am unable to pay the costs of said proceeding or to give security therefor; that I believe I am entitled to redress; and that the issues which I desire to present on appeal are the following:

[INSERT ISSUES]

I further swear that the responses which I have made to the questions and instructions below relating to my ability to pay the cost of prosecuting the appeal are true.

1. Are you presently employed? ☐Yes ☐No
 - a. If the answer is yes, state the amount of your salary or wages per month and give the name and address of your employer.
 - b. If the answer is no, state the date of your last employment and the amount of the salary and wages per month which you received.
2. Have you received within the past twelve months any income from a business, profession or other form of self-employment, or in the form of rent payments, interest, dividends, retirement or disability payments, government benefits or other source? ☐Yes ☐No
 - a. If the answer is yes, describe each source of income, and state the amount received from each during the past twelve months.
3. Do you own any cash or checking or savings account? ☐Yes ☐No
 - a. If the answer is yes, state the total value of the items owned.
4. Do you own any real estate, stocks, bonds, notes, automobiles, or other valuable property (excluding ordinary household furnishings and clothing)?
 - a. If the answer is yes, describe the property and state its approximate value.
5. List the persons who are dependent upon you for support and state your relationship to those persons.

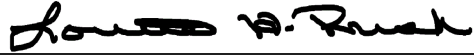
I understand that a false statement or answer to any questions in this affidavit will subject me to penalties for perjury.

Signature

Date

These amendments shall take effect on January 1, 2017.

Done at Indianapolis, Indiana, on 12/15/2016 .

A handwritten signature in black ink, appearing to read "Loretta H. Rush", written over a horizontal line.

Loretta H. Rush
Chief Justice of Indiana

All Justices concur.